

Chance Collar Company, Division of W. R. Grace & Company and United Steelworkers of America, AFL-CIO, Petitioner. Case 23-RC-5077

December 16, 1982

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

By CHAIRMAN VAN DE WATER AND MEMBERS ZIMMERMAN AND HUNTER

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held on June 25, 1982,¹ and Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings and recommendations to the extent consistent herewith.

The Hearing Officer recommended that the election be set aside because the Employer failed to submit the *Excelsior* list² in a timely fashion and omitted zip codes from the list once submitted, due solely to its own negligence.

The Employer excepts to such recommendation claiming that the Petitioner was not prejudiced by these minor violations of the *Excelsior* rule which did not result from either a willful failure or a bad-faith refusal to comply. We find merit in the Employer's exceptions.

The Regional Director, by correspondence dated May 24, 1982,³ informed the Employer that the

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 80 for, and 86 against, the Petitioner; there were 18 challenged ballots, a sufficient number to affect they agreed that all 18 challenged ballots should be counted. The revised tally was 87 for, and 97 against, the Petitioner, with no remaining challenged ballots.

² *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966).

³ All dates herein are 1982 unless otherwise indicated.

Excelsior list was to be received by the Regional Office on or before June 1. The list, which was stamped as received by the Regional Office at 7:57 a.m. on June 2, had been sent registered mail, return receipt requested, on May 28. The list submitted at that time did not contain zip codes for the 232 employees named. The Regional Office advised the Employer of such omission and the Employer supplied the Regional Office with a complete list on June 7. The Petitioner thereafter made at least four mailings to employees prior to the election.

The Hearing Officer's recommendation to set the election aside because the *Excelsior* list was submitted 1 day late and without zip codes elevates form over substance. The list was received in the Regional Office at 7:57 a.m. the day after it was due; it had been mailed May 28, 4 days prior to the filing date. The absence of zip codes from the list does not warrant setting aside the election as the Employer immediately supplied the zip codes upon being informed of their omission, and the Petitioner had a complete list with zip codes for 18 days before the election and made at least four mailings in that time. Under these circumstances, we would find substantial compliance with the *Excelsior* requirements.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for United Steelworkers of America, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.